

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>ELIZABETH ESTEY, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p><b>Case No. 07-CV-10268 (LBS)</b></p>
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[additional captions follow]

***ESPOSITO* PLAINTIFFS' AMENDED NOTICE OF MOTION  
TO CONSOLIDATE ERISA CASES AND APPOINT INTERIM LEAD PLAINTIFFS  
AND INTERIM CO-LEAD COUNSEL**

<p>MARY GIDARO, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p><b>Case No. 07-CV-10273 (LBS)</b></p>
<p>TARA MOORE, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p><b>Case No. 07-CV-10398 (LBS)</b></p>

<p>GREGORY YASHGUR, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-CV-10569 (LBS)</b></p>
<p>CHRISTINE DONLON, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-CV-10661 (LBS)</b></p>

<p>CARL ESPOSITO, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-CV-10687 (LBS)</b></p>
<p>SEAN SHAUGHNESSEY, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-CV-10710 (LBS)</b></p>

<p>BARBARA BOLAND and ANNA MOLIN, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-CV-11054 (LBS)</b></p>
<p>FRANCIS LEE SUMMERS, III, Individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH &amp; CO., INC.; STAN O'NEAL; LOU DIMARIA; INVESTMENT COMMITTEE OF THE MERRILL LYNCH SAVINGS AND INVESTMENT PLAN; ADMINISTRATIVE COMMITTEE OF THE MERRILL LYNCH SAVINGS AND INVESTMENT PLAN; and JOHN DOES 1-30,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><b>Case No. 07-Civ-11615 (LBS)</b></p>

JAMES EASTMAN, On Behalf of Himself and  
All Others Similarly Situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., E.  
STANLEY O'NEAL, LOUIS DIMARIA,  
ALBERTO CRIBIORE, ARMANDO M.  
CODINA, VIRGIS W. COLBERT, JOHN D.  
FINNEGAN, AULANA L. PETERS,  
CHARLES O. ROSSOTTI, JILL K.  
CONWAY, CAROL T. CHRIST, JUDITH  
MAYHEW JONAS, JOSEPH W. PRUEHER,  
ANN N. REESE, DAVID K. NEWBIGGING,  
THE INVESTMENT COMMITTEE OF THE  
MERRILL LYNCH & CO., INC. 401(K)  
SAVINGS AND INVESTMENT PLAN, THE  
ADMINISTRATIVE COMMITTEE OF THE  
MERRILL LYNCH 401(K) SAVINGS AND  
INVESTMENT PLAN, and JOHN DOES 1-20,

Defendants.

**Case No. 08-Civ-00058 (LBS)**

TO: See Attached Service List

PLEASE TAKE NOTICE that on Thursday, February 21, 2008 at 2:15 p.m., Plaintiffs Carl Esposito, Barbara Boland, and Anna Molin ("Esposito Plaintiffs") will move this court before the Honorable Leonard B. Sand, at the Daniel Patrick Moynihan United Courthouse, 500 Pearl Street, Courtroom 15-A, New York, New York 10007 to enter an order: (1) consolidating the above-captioned actions; (2) appointing the Carl Esposito, Barbara Boland and Anna Molin as Interim Lead Plaintiffs; and (3) appointing Keller Rohrback L.L.P. ("Keller Rohrback") and Cohen, Milstein, Hausfeld, and Toll, P.L.L.C. ("Cohen Milstein") as Co-Lead Counsel, with Cohen Milstein's New York office serving as liaison counsel. This Amended Notice of Motion amends the Notice of Motion previously filed on December 14, 2007 in all above captioned cases except *Summers v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-11615 ("*Summers*") and

*Eastman v. Merrill Lynch & Co., Inc., et al.*, Case No. 08-0058 (“*Eastman*”), which had not been docketed at that time.

The original Notice of Motion was filed with a Memorandum of Law and Declaration of Derek Loeser in Support of the *Esposito* Plaintiffs’ Motion to Consolidate ERISA Cases, Appoint Interim Lead Plaintiffs and Interim Co-Lead Counsel.<sup>1</sup> All moving papers previously filed on December 14, 2007 were docketed in the *Summers* and *Eastman* cases prior to the filing of this Amended Notice of Motion, which is based on the above referenced Memorandum of Law and Declaration and other papers on file in this and the related cases filed with this Court. (See DE# 7, 8, and 9 in *Summers* and DE# 4, 5, and 6 in *Eastman*)

The *Esposito* Plaintiffs will move this Court for an Order formally setting forth procedures for the efficient management of the ERISA Actions, including the appointment of Interim Lead Plaintiffs and a leadership structure for Plaintiffs’ counsel. Because the above-captioned ERISA Actions contain similar allegations and seek the same relief, in accordance with the *Manual for Complex Litigation* (4th 2004) (the “*Manual*”), in addition to consolidation, it is appropriate for the Court to enter an order setting forth procedures for the management of these cases and appointing a leadership structure for Plaintiffs’ counsel.

In accordance with the recommendations of the *Manual on Complex Litigation* (4<sup>th</sup> 2004), Plaintiffs are submitting for the Court’s consideration a [Proposed] Order Consolidating

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<sup>1/</sup> The Notice of Motion, Memorandum of Law and Declaration of Derek Loeser were docketed on December 14, 2007 as DE # 6, 7 & 8, respectively in *Estey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10268 (LBS); as DE # 7, 8 & 9, respectively in *Gidaro v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10273 (LBS); as DE # 6, 7 & 8, respectively in *Moore v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV- 10398 (LBS); as DE # 6, 7 & 8, respectively in *Yashgur v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV- 10569 (LBS); as DE # 5, 6 & 7, respectively in *Donlon v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10661 (LBS); and as DE # 5, 6 & 7, respectively in *Shaughnessey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10710 (LBS).





Bruce F. Rinaldi  
[brinaldi@cmht.com](mailto:brinaldi@cmht.com)  
Michelle C. Yau  
[myau@cmht.com](mailto:myau@cmht.com)  
1100 New York Avenue, NW  
Suite 500 West  
Washington, DC 20005-3964  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699

Marc I. Machiz  
[mmachiz@cmht.com](mailto:mmachiz@cmht.com)  
1 South Broad Street  
Suite 1850  
Philadelphia, PA 19107  
Telephone: (215) 825-4016  
Facsimile: (215) 825-4001

**KELLER ROHRBACK L.L.P**

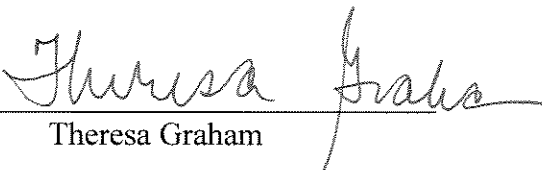
Lynn L. Sarko  
[lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)  
Derek W. Loeser  
[dloeser@kellerrohrback.com](mailto:dloeser@kellerrohrback.com)  
Erin M. Riley  
[eriley@kellerrohrback.com](mailto:eriley@kellerrohrback.com)  
Tyler L. Farmer  
[tfarmer@kellerrohrback.com](mailto:tfarmer@kellerrohrback.com)  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
Telephone: (206) 623-1900  
Facsimile: (206) 623-3384

***Counsel for the Esposito Plaintiffs and  
Proposed Interim Co-Lead Counsel for the  
Class***

**CERTIFICATE OF SERVICE**

I, Theresa Graham, hereby certify that on February 8, 2008, I caused the following documents to be served upon the person/entities and counsel of record listed on the attached service list via electronic mail.

1. *Esposito* Plaintiffs' Amended Notice of Motion to Consolidate ERISA Cases and Appoint Interim Lead Plaintiffs and Interim Co-Lead Counsel; and
2. *Esposito* Plaintiffs' [Proposed] Order Consolidating ERISA Cases, Appointing Interim Lead Plaintiffs and Interim Co-lead Counsel

  
Theresa Graham

**SERVICE LIST**

*Estey v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10268 (LBS)  
*Gidaro v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10273 (LBS)  
*Moore v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10398 (LBS)  
*Yashgur v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10569 (LBS)  
*Donlon v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10661 (LBS)  
*Esposito v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10687 (LBS)  
*Shaughnessey v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-10710 (LBS)  
*Boland v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-11054 (LBS)  
*Summers v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-11615 (LBS)  
*Eastman v. Merrill Lynch & Co., Inc., et al.*, Case No. 08-0058 (LBS)

<p>Wai Kin Chan, Esq.  Curtis Victor Trinko, Esq.  Law Offices of Curtis V. Trinko, LLP  16 West 46<sup>th</sup> Street, Seventh Floor  New York, New York 10036  Fax: (212) 986-0158</p> <p>Email: <a href="mailto:kchan@trinko.com">kchan@trinko.com</a>  <a href="mailto:ctrinko@trinko.com">ctrinko@trinko.com</a></p> <p><i>Counsel for Plaintiff Elizabeth Estey and Tara Moore</i></p>	<p>Edward W. Ciolko, Esq.  Joseph H. Meltzer, Esq.  Joseph A. Weeden, Esq.  Katherine B. Bornstein, Esq.  Schiffrin &amp; Barroway, LLP  280 King of Prussia Road  Radnor, PA 19087  Fax: 610-667-7056</p> <p>Email: <a href="mailto:eciolko@sbclasslaw.com">eciolko@sbclasslaw.com</a>  <a href="mailto:jmeltzer@sbclasslaw.com">jmeltzer@sbclasslaw.com</a>  <a href="mailto:jweeden@sbclasslaw.com">jweeden@sbclasslaw.com</a>  <a href="mailto:kbornstein@sbclasslaw.com">kbornstein@sbclasslaw.com</a>  <a href="mailto:eciolko@sbclasslaw.com">eciolko@sbclasslaw.com</a></p> <p><i>Counsel for Plaintiffs Elizabeth Estey and Tara Moore</i></p>
<p>Ralph M. Stone, Esq.  Thomas George Ciarlone, Jr., Esq.  Amanda Claire Scuder, Esq.  Shalov Stone &amp; Bonner LLP  485 Seventh Avenue, Suite 1000  New York, New York 10018  Fax: (212) 239-4310</p> <p>Email: <a href="mailto:rstone@lawssb.com">rstone@lawssb.com</a>  <a href="mailto:tciarlone@lawssb.com">tciarlone@lawssb.com</a>  <a href="mailto:ascuder@lawssb.com">ascuder@lawssb.com</a></p> <p><i>Counsel for Plaintiff Mary Gidaro</i></p>	<p>Edwin J. Mills, Esq.  Stull Stull &amp; Brody  6 East 45<sup>th</sup> Street, 5<sup>th</sup> Floor  New York, New York 10017  Fax: (212) 490-2022</p> <p>Email: <a href="mailto:ssbny@aol.com">ssbny@aol.com</a></p> <p><i>Counsel for Plaintiff Gregory Yashgur</i></p>

<p>Robert A. Izard, Esq. William Edward Bernarduci, Esq. Schatz Nobel Izard P.C. 20 Church Street, Suite 1700 Hartford, CT 06103 Fax: (860) 493-6290</p> <p>Email: <a href="mailto:rizard@snlaw.net">rizard@snlaw.net</a> <a href="mailto:wbernarduci@snlaw.net">wbernarduci@snlaw.net</a></p> <p><i>Counsel for Plaintiff Sean Shaughnessey</i></p>	<p>Robert I. Harwood, Esq. Samuel Kenneth Rosen, Esq. Harwood Feffer LLP 488 Madison Avenue, 8<sup>th</sup> Floor New York, New York 10022 Fax: (212) 753-3630</p> <p>Email: <a href="mailto:rhharwood@hfesq.com">rhharwood@hfesq.com</a> <a href="mailto:srosen@hfesq.com">srosen@hfesq.com</a></p> <p><i>Counsel for Plaintiff Christine Donlon</i></p>
<p>Jill S. Abrams Abbey Spanier Rodd &amp; Abrams LLP 212 East 39<sup>th</sup> Street New York, New York 10016 Fax: (212) 624-5191</p> <p>Email: <a href="mailto:jabrams@abbeyspanier.com">jabrams@abbeyspanier.com</a></p> <p><i>Counsel for Plaintiff Francis Lee Summers, III</i></p>	<p>Arvind Khurana Lori G. Feldman Sara E. Fuks Milberg Weiss Bershad &amp; Schulman LLP One Pennsylvania Plaza New York, New York 10119 Fax: (212) 656-1222</p> <p>Email: <a href="mailto:akhurana@milbergweiss.com">akhurana@milbergweiss.com</a> <a href="mailto:lfeldman@milbergweiss.com">lfeldman@milbergweiss.com</a> <a href="mailto:sfuks@milbergweiss.com">sfuks@milbergweiss.com</a></p> <p><i>Counsel for Plaintiff James Eastman</i></p>
<p>Paul Blankenstein, Esq. William J. Kilberg, Esq. Gibson, Dunn &amp; Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306 Fax: (202) 530-9532</p> <p>Email: <a href="mailto:pblankenstein@gibsondunn.com">pblankenstein@gibsondunn.com</a> <a href="mailto:wkilberg@gibsondunn.com">wkilberg@gibsondunn.com</a></p> <p><i>Counsel for All Defendants, except Merrill</i></p>	<p>Jay B. Kasner, Esq. Skadden, Arps, Slate Meagher &amp; Flom LLP Four Times Square New York, New York 10036 Fax: (212) 735-2000</p> <p>Email: <a href="mailto:jay.kasner@skadden.com">jay.kasner@skadden.com</a></p> <p><i>Counsel for Defendant Merrill Lynch</i></p>